

10 Fines

10.1 Fines Generally

Certain provisions of the Immigration and Nationality Act render individuals and carriers liable for transporting unauthorized aliens into the United States. See Immigration and Nationality Act § 273; 8 C.F.R. part 1280. Fines may be assessed by a DHS Special Agent in Charge, the DHS Associate Director for Operations, U.S. Citizenship and Immigration Services, or the DHS National Fines Office. 8 C.F.R. § 1280.1.

In fines cases, DHS is initially responsible for appeal management, including initial briefing. The Board's role in the appeal process does not begin until the completed record is received from DHS.

10.2 Jurisdiction

Where a DHS officer enters an adverse decision against an individual or carrier in a fines case, an appeal may be taken to the Board. 8 C.F.R. § 1280.13(b).

10.3 Processing

(a) *Standing.* — Only the individual or carrier being fined may file an appeal. However, if that individual or carrier admits the allegations in the Notice of Intent to Fine or does not answer it, the opportunity to appeal is waived. 8 C.F.R. § 1280.13(a).

(b) *Filing the appeal.* —

(i) *How to file.* — Fine appeals are made on the Notice of Appeal (Form EOIR-29). 8 C.F.R. § 1003.3(a)(2). (This form is different from the Form EOIR-26 used in Immigration Court proceedings.)

(ii) *Where to file.* — Unlike appeals from the decisions of Immigration Judges, fine appeals are filed with DHS, in accordance with the applicable regulations and any instructions that appear on the DHS decision. See generally 8 C.F.R. § 1003.3(a)(2). The appeal must be filed with the DHS office having administrative control over the fine record.

(iii) When to file. — A fine appeal must be filed within 15 days after the date of the DHS decision or, if mailed, 18 days after that decision. See 8 C.F.R. §§ 103.5a(b), 1280.13(b).

(iv) Fee. — The filing fee for a fine appeal is \$110. See 8 C.F.R. § 1003.8(b). Unlike appeals of Immigration Judge decisions, the fee is filed directly with DHS, in accordance with DHS instructions. The fee should be paid in the manner instructed by DHS.

(v) Representation. — An individual or carrier appealing a fine decision may be represented by an attorney or other authorized representative. See generally Chapter 2 (Appearances before the Board). If that individual or carrier is represented, the appeal should be accompanied by a completed and executed Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27). See 8 C.F.R. § 1292.4(a).

(vi) Supporting briefs. — Briefs, if desired, are filed with DHS, at the same office as the Notice of Appeal (Form EOIR-29) and in accordance with any briefing schedule set by DHS. See 8 C.F.R. § 1003.3(c)(2). Requests to extend the time for filing a brief should be directed to DHS. The Board may, in its discretion, authorize briefs to be filed directly with the Board. 8 C.F.R. § 1003.3(c)(2).

Absent special instructions from DHS, briefs on fine appeals should generally follow the guidelines set forth in Chapters 3.3 (Documents) and 4.6 (Appeal Briefs).

(vii) Evidence. — The Board does not consider new evidence on appeal. If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the matter to DHS for consideration of that new evidence. If the individual or carrier wishes to submit new evidence, that individual or carrier should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

However, the Board will not consider evidence or remand the matter where the proffered evidence was expressly requested by DHS and a reasonable opportunity to provide it was given before the matter was adjudicated by DHS. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(viii) Stipulations. — The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the appeal.

(c) Processing. — Once an appeal has been properly filed with DHS and the record is complete, DHS forwards the record to the Board for adjudication of the appeal.

(i) Record on appeal.— The record on appeal consists of all decisions and documents in the record, including some or all of the following items: the Notice of Intent to Fine, any written defense or correspondence, any documentary evidence submitted to DHS, the record of any personal interviews, the DHS decision, the Notice of Appeal, any briefs on appeal, the record of any prior DHS action, and the record of any prior Board action.

(ii) Briefing schedule.— Briefing schedules are issued by DHS and are to be completed prior to the forwarding of the record to the Board. Accordingly, the Board generally does not issue briefing schedules in fine cases.

(iii) Status inquiries / DHS. — Until the record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. *The Board has no record of the appeal until the record is received by the Board.* Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.

(iv) Status inquiries / Board. — Confirmation that the Board has received a fine record from DHS can be obtained from the Clerk's Office. See Appendix B (Directory). The Board tracks fine appeals by the name and an assigned case number for the individual or carrier. All status inquiries should contain this information. See generally Chapter 1.6(a) (All communications).

(v) Adjudication. — Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date, unless the order provides otherwise.

(d) Motions. — Motions filed during the pendency of an appeal should be filed where the fine record is located. Motions may not be filed with the Board until the record has been received by the Board. See Chapter 10.3(c)(iv) (Status inquiries / Board).

All motions filed subsequent to the Board's adjudication of an appeal, including motions to reopen and motions to reconsider the Board's decision, are to be filed with the DHS office having administrative control over the record, not with the Board. 8 C.F.R. § 1003.2(g)(2)(ii).

(e) Withdrawal of appeal. — The appeal may, at any time prior to the entry of a decision by the Board, be voluntarily withdrawn. To withdraw an appeal, the individual or carrier should file a written request, with a cover page labeled "WITHDRAWAL OF FINE APPEAL," with either DHS or the Board, whichever holds the file at the time the withdrawal is submitted. See Chapter 4.11

(Withdrawing an Appeal), Appendix F (Sample Cover Page). If the appeal is before the Board, Proof of Service on DHS should be submitted with the withdrawal. See Chapters 3.2(d) (Proof of Service), 4.11 (Withdrawing an Appeal).

10.4 Personal Interviews

(a) Remand. — The Board has the authority to request or direct a personal interview of the individual or carrier. 8 C.F.R. § 1280.12. A remand may be warranted when DHS enters a decision without granting a personal interview, either initially or on remand. See 8 C.F.R. §§ 1280.12, 1280.13(b). A remand may also be warranted when the DHS decision does not adequately state the reasons for assessing the fine. *Matter of Air India "Flight No. 101"*, 21 I&N Dec. 890 (BIA 1997).

(b) Invalidation of fine. — If DHS fails to grant an interview, the Board may invalidate the fine. *Matter of "Beechcraft B-95, #N21JC"*, 17 I&N Dec. 147 (BIA 1979).